KATHRYN J. STORY

IBLA 87-5 Decided September 15, 1988

Appeal from a decision of the California State Office, Bureau of Land Management, declaring placer mining claims null and void ab initio. CA-MC 180956 through CA-MC 180963.

Affirmed.

1. Mining Claims: Lands Subject To--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect Of

   Placer mining claims are properly declared null and void ab initio if, at the time of location, the land is withdrawn from prospecting, location, entry, and purchase under the mining laws of the United States.

2. Mineral Leasing Act: Lands Subject To--Mining Claims: Lands Subject To

   With limited exceptions, hardrock minerals such as gold and silver are not subject to leasing by the United States.

3. Mining Claims: Lands Subject To--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect Of

   Revocation of a withdrawal of lands subsequent to the date of location of placer mining claims will not retroactively validate those claims.

APPEARANCES: Kathryn J. Story, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Kathryn J. Story has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated August 19, 1986, declaring her eight placer mining claims, SDM 1 through 3, DM Sarah B, and TMEC Mineral Hill 1 through 4, null and void ab initio.

The mining claims at issue were located between April 7 and 11, 1986. Copies of the notices of location were filed with the California State Office on July 7, 1986, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976 (Act), 43 U.S.C. | 1744(b) (1982), and 43 CFR 3833 of the regulations duly promulgated by the Secretary pursuant to that Act. The location notices situate all eight placer mining claims in secs. 12 and 13, T. 15 N., R. 6 E., Mount Diablo Meridian. In its decision declaring

the claims null and void ab initio, BLM noted that the land embraced by the claims had been withdrawn from entry and location under the mining laws by Public Land Order No. (PLO) 3737, dated July 6, 1965.

A review of relevant PLO's and Executive orders disclose that Exec. Order No. 9146 and PLO 26, 7 FR 68 (Aug. 25, 1942), originally withdrew "from all forms of appropriation under the public land laws, including the mining laws, and reserved for the use of the War Department as a campsite," certain public lands, including, inter alia, secs. 12 and 13, T. 15 N., R. 6 E., Mount Diablo Meridian.

Exec. Order No. 9526, dated Feb. 28, 1945, which amended PLO 26, provided for the revesting of jurisdiction over the reserved lands in the Department of the Interior. The Executive Order, however, expressly continued the withdrawal provided by PLO 26.

PLO 1709, 23 FR 6182 (Aug. 11, 1958), further amended PLO 26 and provided:

> The Department of the Interior retains jurisdiction over the management of the surface and subsurface resources including mineral resources, of the lands. No disposal of such resources will be made except under applicable public land laws with the concurrence of the Department of the Air Force and, where necessary, only after appropriate modification of the provisions of this order.

PLO 3737, 30 FR 8835 (July 6, 1965), partially revoked the withdrawal of lands under PLO 26 and thereby opened the lands to selection by the State of California and "other valid applications and selections under the nonmineral public land laws, and applications and offers under the mineral leasing laws." (Emphasis supplied.) However, PLO 3737 specifically re-withdrew all minerals in the subject lands "from prospecting, location, entry and purchase under the mining laws of the United States as a public safety measure."

On appeal, appellant argues that PLO 3737, interpreted literally, does permit prospecting on the withdrawn lands if appellant releases the United States from liability, and she requests that the Board issue her a lease or permit containing a release of liability inuring to the benefit of the United States (Statement of Reasons (SOR) at 1, 2).

Appellant also notes there is no record of death or injury from any exploded bombs in these sections and concludes, contrary to the rationale used to justify reserving the lands from mineral entry, the withdrawn lands are safe (SOR at 2). The development of the mineral resources, appellant urges, would benefit the economy by providing minerals and metals essential to industry, national defense, and medicine (SOR at 3-5).

Finally, appellant submits that revocation of the withdrawal or opening the lands is consistent with the policy underlying opening of the Bravo-20 Bombing Range in Nevada and the Chocolate Mountain Aerial Gunnery Range in California to exploration and development under new section 2412 (Appellant's Supp. to SOR, dated Nov. 28, 1986).

[1] The law is well settled that a mining claim located on lands which are not open to location confers no rights on the locator and is properly declared to be null and void ab initio. Coeur Explorations, Inc., 100 IBLA 293, 295 (1987); Harold E. De Roux, 94 IBLA 350 (1986); Azome Utah Mining Co., 86 IBLA 170, 171 (1985); John C. Neill, 80 IBLA 39, 40 (1984); John A. Grassmeier, 77 IBLA 156, 159 (1983).

While PLO 3737 revoked the withdrawal of lands under PLO 26, insofar as nonmineral entries were concerned, it expressly continued the withdrawal with respect to "prospecting, location, entry, and purchase under the min-eral laws of the United States." PLO 3737 clearly and unequivocally provides that the lands were withdrawn from mineral entry and location and renders appellant's placer mining claims null and void ab initio.

Appellant's contention that her eight placer mining claims are valid if she releases the United States from liability cannot be sustained. Appellant relies on paragraph 5 of PLO 3737 which provides:

> All leases and permits shall be issued with the understanding that the United States neither warrants nor represents that the lands are safe or suitable for such use. All leases and permits shall contain provisions absolving and releasing the United States from any and all liability of whatever nature for damage for personal injury, death or damage to property arising out of operations, under such lease or permits, which may be suffered by the lessee, or permittee, his successors and assigns, and the agents, servants and employees of either. [Emphasis supplied.]

This provision relates solely to leasing under the applicable mineral leasing laws. It has no applicability to the location of mining claims under the general mining laws of the United States.

[2] Appellant's request that BLM issue a lease or permit must be rejected. With limited exceptions not applicable here, 1/ the Department has no authority to lease hardrock mineral deposits, such as gold and silver. Thus, the deposits which appellant seeks to appropriate are not subject to mineral leasing.

[3] Appellant's arguments contesting the wisdom of the Secretary's decision withdrawing the lands from "prospecting, location, entry, and purchase under the mining laws of the United States as a safety measure" and urging revocation of the withdrawal can afford her no relief in this case.

Even assuming arguendo that revocation of the withdrawal subsequent to the date of the location of appellant's placer mining claims was accomplished, the revocation would not restore or retroactively validate appellant's placer mining claims. See Harold E. De Roux, supra at 351; Paul D. Troy, 43 IBLA 245, 248 (1979); J. P. Hinds, 25 IBLA 67, 73 (1976).

1/ See, e.g., section 402 of Reorganization Plan No. 3, 60 Stat. 1099, and the Act of Mar. 4, 1917, 39 Stat. 1150, authorizing hardrock leasing of lands acquired under the Weeks Act, Act of Mar. 1, 1911, 36 Stat. 963.

Thus, inasmuch as the subject claims were null and void ab initio, it is irrelevant whether the considerations appellant addresses for revoking the withdrawal should one day commend themselves to the appropriate authorities of the Department.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge